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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,761	11/04/2003	James D. Carper	100-00222	6335
26753	7590	12/08/2006	EXAMINER	
ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202			MATZEK, MATTHEW D	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,761

Applicant(s)

CARPER ET AL.

Examiner

Matthew D. Matzek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/2/2006 has been entered.
2. Claims 1-11 are currently active and claims 12-66 have been canceled. Independent claim 1 has been amended to include a second base and auto-adhesive cling layer having similar structure and composition to that of the first base and auto-adhesive cling layer.

Response to Amendment

3. The previously applied prior art and double patenting rejections have been withdrawn as they failed to teach a second base and auto-adhesive cling layer. The previously applied 112 2nd rejection of claims 1-11 has been withdrawn due to amendment.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In each of the rejected claims the language refers to a singular base layer or cling film layer. This is indefinite as claim 1 recites two base layers and cling layers so it is unclear as to which layer (first or second) Applicant is referring to in the dependent claims. As the composition and structure of the first and second layers is identical in claim 1, Examiner has

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interpreted the subsequent dependent claims to reference limitations for both the first and second base and cling film layers.

5. Regarding claim 2, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 2 and 4-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mann et al. (US 5,085,655).

a. Mann et al. teach a cohesive tape system useful in diaper fastening systems (col. 3, lines 19-25). The tape system comprises an autoadhesive layer of thermoplastic elastomer and an integrally joined thermoplastic layer (col. 3, lines 49-55). As shown in Figure 14, two auto-adhesive layers **14** may be cling together. Claims 2 and 4-6 are rejected as the base layer may be made of polyurethane, polyester, acrylics, vinyls, polyolefins and their copolymers (col. 4, lines 46-69). Polyolefins available for use as the base layer include polypropylene and polyethylene (col. 6, lines 10-29).

b. Although Mann et al. do not explicitly teach the claimed features of stretchability, peel strength or sheer strength, it is reasonable to presume that said properties are inherent to Mann et al. Support for said presumption is found in the use of like materials (i.e. auto-adhesive cling layer and base layers of the claimed composition). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the

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presently claimed properties of stretchability, peel strength or sheer strength would obviously have been present on the Mann et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Claim Rejections - 35 USC § 103

7. Claims 3, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mann et al. (US 5,085,655) as applied to claim 1 above, and in further view of Tuman et al. (US 2001/0018110 A1). Mann et al. are silent as to the use of a breathable, nonwoven base layer.

a. Tuman et al. teach the creation of a breathable web material that may serve as a refastenable article (abstract). The breathable refastening system may be used in diapers [0041]. The web of Tuman et al. is capable of adhering to itself (i.e. auto-adhesive). The base material upon which the fastening system is conjoined may be an inflexible nonwoven web [0060].

b. Since Mann et al. and Tuman et al. are from the same field of endeavor (i.e. auto-adhesive fasteners), the purpose disclosed by Tuman et al. would have been recognized in the pertinent art of Mann et al.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Mann et al. with to breathable and have a nonwoven base layer with the motivation of creating a breathable article as disclosed by Tuman et al.

Double Patenting

8. Claims 1-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 48-90 of copending Application No. 10/981,046 in view of Mann et al. (US 5,085,655). The composition of the applied application is the same as that which is instantly claimed, but the application fails to teach the use of a second auto-adhesive layer. As set forth in this Office Action two auto-adhesive layers may be adhered to one another for use in diapers. One would have been motivated to have made a second auto-adhesive layer as set forth in Mann et al. with the motivation of creating a cohesive tape system for diapers.

This is a provisional obviousness-type double patenting rejection.

9. Claims 1-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-90 of copending Application No. 10/867,438 in view of Mann et al. (US 5,085,655). The composition of the applied application is the same as that which is instantly claimed, but the application fails to teach the use of a second auto-adhesive layer. As set forth in this Office Action two auto-adhesive layers may be adhered to one another for use in diapers. One would have been motivated to have made a second auto-adhesive layer as set forth in Mann et al. with the motivation of creating a cohesive tape system for diapers.

10. This is a provisional obviousness-type double patenting rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mdm *MDM*


Norca L. Torres-Velazquez
Primary Examiner
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12/6/06